

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

FRANCO JOBANY

: DOCKET NO. 6:09-cv-1085
Section P

VS.

: JUDGE DOHERTY

**BUREAU OF IMMIGRATION &
CUSTOMS ENFORCEMENT, ET
AL.**

: MAGISTRATE JUDGE HILL

REPORT AND RECOMMENDATION

Currently before the court is Franco Jobany's petition for writ of *habeas corpus* filed on June 25, 2009 pursuant to 28 U.S.C. § 2241. Petitioner complains of his alleged custody and detention by the Department of Homeland Security/Bureau of Immigration Customs Enforcement (DHS/ICE). He names the DHS/ICE as the sole respondent. This matter has been referred to the undersigned magistrate judge for review, report, and recommendation in accordance with 28 U.S.C. § 636(b)(1)(B).

The petition alleges that petitioner, a native of Honduras, has been in the custody of DHS/ICE for four months, but that deportation proceedings have not been instituted. Accordingly, petitioner requests that this court order his immediate removal or his release from custody.

This court's records demonstrate that petitioner is currently being federally prosecuted for his illegal re-entry into this country after having been previously deported pursuant to 8 U.S.C. § 1326(a). At the time that this petition was filed, petitioner was in the custody of the DHS/ICE and he sought to have the court review his pre-removal detention. However,

petitioner has now been federally indicted and his custody has therefore been transferred to the Attorney General and the United States Marshal Service. *See United States v. Franco Jobany*, 6:09cr0143 (W.D. La. 2009), Detention Order Pending Trial, dated July 28, 2009. Because the petitioner is no longer in DHS/ICE custody, his challenge to his pre-removal detention is now moot and should be dismissed.

For this reason,

IT IS RECOMMENDED that this petition be DENIED AND DISMISSED WITH PREJUDICE as moot.

Under the provisions of 28 U.S.C. § 636(b)(1)(C), the parties have ten (10) business days from receipt of this Report and Recommendation to file any objections with the Clerk of Court. Timely objections will be considered by the district judge prior to a final ruling.

FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN TEN (10) BUSINESS DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY FROM ATTACKING ON APPEAL, EXCEPT UPON GROUNDS OF PLAIN ERROR, THE UNOBJECTIONED-TO PROPOSED FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT

COURT.

THUS DONE AND SIGNED in Chambers at Lafayette, Louisiana, July 29, 2009.

C. Michael Hill
C. MICHAEL HILL
UNITED STATES MAGISTRATE JUDGE